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South Africa and the European Communities — towards a new relationship

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"SOUTH AFRICA AND THE EUROPEAN COMMUNITIES - TOWARDS A NEW RELATIONSHIP"

1. Introduction

South Africa has emerged in the 1990's as a country which is undergoing major social, political and economic change. The policy of apartheid has been officially abandoned. State President de Klerk has kept his word and is fulfilling the promises he undertook to meet. Not only have hundreds of discriminatory laws been removed from the statute book but the principle of a new *Rechtsstaat* has been adopted as the foundation for South Africa.

Government's approach now is to discuss changing the constitution at a Multi-Party Conference to be convened next month (December 20th - 21st, 1991). Moreover, an increasing number of the country's major political groupings have committed themselves to take part in the multi-party talks aimed at establishing a democratic, just and non-racial South Africa.

On the international front South Africa is successfully breaking out of years of isolation. Sanctions are crumbling, new markets are opening, loans are more readily obtained. Doors are opening to South African scientists, sportsmen and women. New diplomatic relations are being established on an almost weekly basis.

Domestically a number of programmes aimed at improving the quality of life of the disadvantaged are being introduced. Negotiations on a new constitution are making real headway. South Africa is now firmly geared to start multi-party talks aimed at drawing up the country's future constitution. Recently the SA Law Commission completed its Interim Report on Human Rights in which substance is given to the provision of a Bill of Rights which will be enforceable by the Courts (a copy is attached).

In this address I will attempt to outline the significant progress in the constitutional field, as well as a number of other related events. I also intend to set out how these developments could lead to a new partnership between South Africa and the European Communities which will be mutually beneficial to both parties.

2. Constitutional development - where do we stand now?

The debate on South Africa's constitutional future has reached an important stage with various political groupings declaring their intent to participate in this process. The Government continues to boost the negotiating impulse. Substantial progress has been recorded with active dialogue being conducted over a wide-spectrum.

2.1. The National Peace Accord

An important catalyst in this process was the signing of the National Peace Accord in September this year. This Accord saw a number of political players come forward for the first time in the country's history to thrash out the terms for ending violence in the country. The significance of this event cannot be underestimated. It has proved that South Africans are willing to work together and reach consensus on key issues.

The signing of this Accord saw major political parties committing themselves to a multi-party democracy. The signatories agreed on a number of related issues, such as basic rights and principles for various sectors of the community. The September Accord has moreover provided a precedent for involvement of significant political, community and Church leaders in the monitoring and supervision of the security forces. The possibility that similar arrangements could be extended to other important areas of government will be debated shortly.

The conclusion of this Accord has undoubtedly added impetus to the debate on constitutional reform. It has also served to define the ideals of political groupings more narrowly and has identified areas of common ground.

2.2 ANC elections - Patriotic Front

Another development which has propelled the negotiating process is the ANC's National Conference held in July this year. The composition of the National executive elected - the first since the unbanning of the organisation - demonstrated that a majority within the rank-and-file of the ANC favour negotiations.

Since that time a Patriotic Front was formed in October, jointly sponsored by the two major Black nationalist movements, the ANC and the PAC. At this Conference, both the ANC and the PAC agreed that multi-party talks could take place. A wide range of other

organisations have also committed themselves to the Patriotic Front, thereby speeding up the holding of talks to negotiate a new constitution.

2.3. Constitutional proposals - common ground and differences

Furthermore, a number of political parties have now put forward their constitutional proposals. These are the National Party, the ANC, the Inkatha Freedom Party and the Democratic Party. Although there are considerable differences as to the specifics of each constitutional model, there are significant areas of agreement.

As far as the individual proposals are concerned, the following is noteworthy:

The National Party recently unveiled its constitutional model for use as a starting point in the negotiating process. The plan is rooted in two fundamental principles - equal civil rights, including the vote for all citizens in national elections, and the protection of minorities.

The NP's plan involves devolving some of the powers of central government to regional and local authorities. The aim is to end white minority rule and preventing racial domination of any sort in the future.

The ANC on the other hand favours a strong central government. They propose an executive presidency and a parliament elected on "a winner takes all" principle.

The Pan Africanist Congress (PAC) favours Black majority rule, within a multi-party parliamentary democracy. They uphold the principle of a Bill of Rights, but not any entrenched rights restricting their proposals for sweeping land reform, redistribution of wealth and property, affirmative action for the Blacks at the expense of the Whites. Proportional representation electoral systems may be acceptable provided there are no privileged votes for minorities.

The Inkatha Freedom Party's proposals broadly speaking embraces the concept of federalism and highlights the notion of regional government.

The Democratic Party underwrites a federal system, with eight to twelve States.

Other political groupings are in the meantime deliberating on their proposals. There is an ongoing debate about these and other proposals. These proposals will ultimately have to be debated at the negotiating table.

Prospects for multi-party talks are good. While it is possible to discern the way in which the various positions are likely to be reconciled, the details of a final compromise are not fully predictable.

In summary all the above-mentioned political parties and groupings agree on the following basic issues: universal suffrage, a multi-party democracy, parliamentary government, an independent judiciary and an entrenched Bill of Rights. The issues of proportional representation and the protection of minority rights is still being debated.

2.4. The Multi-Party Conference

The Multi-Party Conference will meet on the 20th and 21st of December. ANC President Mr Nelson Mandela announced recently that the ANC's preparations for the conference were well in hand. He stressed that the ANC was ready to join opposition parties and the government at the negotiating table. He also declared the ANC's intent to make a positive contribution towards the success of the Conference.

In another important development Constitutional Development Minister Gerrit Viljoen recently announced that government would consider transitional arrangements while a new constitution is being negotiated. He indicated that the present constitution could be changed if need be to allow for joint control of government by other parties - including the ANC - as part of the transitional arrangements. If necessary, these changes will be endorsed by means of a referendum. The Government's approach is that it is prepared to change the constitution at a Multi-Party Conference if the Conference so wishes.

The significance of this announcement narrows the gap between the government's and other parties' views on institutional mechanisms. It leaves the Multi-Part Conference free to decide on the modalities and composition of the eventual constitutional conference.

To add further momentum to the constitutional debate, President De Klerk has announced that Parliament will open a week earlier than usual next year for a session that will be dominated by the negotiation process and the proposed Bill of Rights.

3. Bill of Rights

The South African Government and the ANC agree that a Bill of Rights be incorporated in the new constitution and this agreement cannot be underestimated. In 1986 the SA Law Commission was commissioned by the SA government to undertake a major investigation on the protection of individual and group rights.

In March 1989 the Law Commission - consisting of judges, practitioners and academics - published a working paper on the protection of human rights in South Africa. In that working paper, a case was made for a comprehensive Bill of Rights legally enforceable by the Courts that would protect individual rights. South Africans were invited to comment on the proposals contained in the working paper. They could also submit new or alternative proposals and assist in refining the report's findings. The response to this invitation was wide-ranging. The Commission has recently completed an Interim Report.

The report is termed "interim" since the negotiating parties may come back to the Commission to research into certain questions and to finalise the proposed draft Bill.

On the whole, response to the Report has been positive and State President de Klerk has expressed the wish that all negotiating parties make fruitful use of the Commission's proposals in their discussions on a Bill of Rights. He commented that some of the matters dealt with in the Interim Report were already implemented or were reflected in current government policy.

The Government has furthermore associated itself with a number of important aspects of the Commission's proposals. This includes the application of affirmative action regarding the need that exists to reduce deficits in the South African community. President De Klerk has stated that the Government will proceed assiduously in this direction with due consideration to the parameters of the country's financial capacity and manpower capabilities. He said that the Government was committed to eliminate poverty and improve the quality of life. Extensive assistance programmes have already been launched as part of a programme of socio-economic upliftment. This includes effective training programmes that will enable citizens to develop their full potential.

Basically, the Draft Bill recognises three fundamental categories of rights, namely:

- First generation rights which include basic civil and political rights ;
- Second generation rights - the socio-economic rights which include the right to medical care, food, housing, employment, education, social security, workers' rights and
- Third generation rights (green rights) such as the right to a safe and secure environment.

Significantly, the report proposes an entrenched bill of individual rights, enforced by a constitutional court at Appellate Division level. An interesting aspect connected to these recommendations is that constitutional experts rather than the present Appeal Court Judges are to serve in the constitutional chamber. This opens the possibility for the immediate appointment of persons from diverse backgrounds to the constitutional court. The proposed bill provides *inter alia* for the right to vote and a prohibition on discrimination by the State. The Commission came to the conclusion that at present legal conditions for the right to secession have not - and probably will not - be met. Therefore the option of partition is not catered for.

Furthermore, no provision is made for the protection of group rights. The Commission argued that these rights may be indirectly recognised through protecting collective values such as religion, culture and language.

Other significant proposals include the creation of the office of *ombudsman* to arbitrate on behalf of individuals or groups regarding complaints on human rights violations and maladministration by executive or administrative bodies. An *ombudsman* has now been appointed.

The concept of affirmative action also receives due consideration. The Law Commission recognised the need to address inequalities resulting from apartheid. However, the Commission rejects affirmative action where this could result in reverse discrimination or retribution. Instead, it is proposed that affirmative action should consist of a real programme of upliftment and so guaranteeing the principle of equal opportunities for all. The Commission has come to the conclusion that affirmative action may not entail taking from one to give to another or that certain people are favoured at the expense of others. The application of affirmative action is rejected where this would result in an attempt to justify nationalisation or redistribution of land, minerals and other assets.

The most significant effect of the proposed Bill is that, if enacted, it will mean the end of racial differentiation and discrimination, and the final death knell of apartheid.

There is widespread support for the introduction of such a bill. Respect for human rights has become a general international norm. The EC and other organisations increasingly link a country's respect for human rights with the granting of development aid.

4. SA and the European Communities

It is clear that an exciting political process is evolving. Not only politically, but also in the legal and socio-economic field. The extent to which the situation in South Africa has changed - and is changing - is widely acknowledged and reflected in the reaction of the international community.

Recently South Africa's staunchest opponents recognised these changes. India, the first country to impose sanctions against South Africa, announced a lifting of the ban on travel and visa restrictions on South Africans. This was in line with the decision reached at the recent Commonwealth summit in Harare to lift people-to-people restrictions on SA. Australia followed suit, as did Canada. The latter has announced a multi-million dollar aid package for educational and training purposes in South Africa.

Japan has lifted all trade and investment barriers with SA, including the ban on the import of steel and Kruger Rands. African countries such as Zambia have come forward and expressed the wish to forge open and direct ties.

4.1. Relations between South Africa and the EC

As far as the EC is concerned, South Africa has legally complied with every demand for the lifting of restrictive measures as was agreed upon at the 1990 Rome summit.

However, an awkward situation has arisen caused by the Danish Parliamentary opposition group which has vetoed implementing the lifting of restrictive measures. This includes the lifting of the EC's ban on steel and Kruger Rands imports.

The recalcitrance of the Danish opposition is a matter of concern for South Africa, seeing that legally all conditions for the lifting of these measures as laid down by the EC and much more have been met. It is to be hoped that this last obstacle can be overcome as

soon as possible in order that the process of normalising relations between South Africa and the EC can start as soon as possible.

4.2 Diplomatic Relations

The European Commission has already taken a first step in the direction of establishing an official presence in South Africa with the opening of a technical office in Pretoria during February 1991. The duties of this office include that of monitoring the application of the EC's "Programme for Positive Measures to Assist the Victims of Apartheid". It is foreseen that the present office will shortly be replaced by a fully-fledged diplomatic delegation, placing the seal on the normalising of political relations between the two parties.

The establishment of full diplomatic ties between the EC and South Africa would go a long way not only towards normalising relations and ironing out problem areas, but could also make a valuable contribution in South Africa's transition to a multi-party democracy.

4.3 Future trade and co-operation relations with the EC

Due to the EC's current classification of the RSA in the category of industrialised countries, eg. the USA, Canada, Australia, future co-operation and trade will most probably have to be formalised in a bilateral trade agreement.

4.4 Trade Agreement

The importance of an agreement for South Africa is evident from the country's trade statistics with the Community. The Community is South Africa's most important trading partner.

In view of the importance of a healthy economy for political stability it is to be hoped that in the period leading to the conclusion of a formal trade agreement, the Community may consider to place South Africa's name on the list of countries to which the "Generalised System of Trade Preferences" (GSP) is included.

Another priority for South Africa is the elimination of the travel restrictions imposed under the Schengen Accord. As is well known, the Schengen Accord proposes the free movement of persons within certain EC countries. This Accord is expected to be modified to

tie in with a more comprehensive EC policy directive allowing for the free movement of persons within the Community. Of specific concern is the fact that South Africa, together with others, appears on a visa restriction list making entry into EC countries much stricter. This results in delays with issuing visas, additional costs and stricter border control measures for South Africans.

4.5. South Africa's role as a partner

The importance of SA has recently been recognised by the European think-tank, the Centre for European Policy Studies (CEPS). CEPS recently released a report entitled "Settling European Community Priorities for 1991-1992". This report deals inter alia with EC foreign policy objectives. Of particular significance for South Africa as well as the EC is the fact that the country is recognised as the promoter of economic growth in Southern African and even sub-Saharan Africa. In this study SA is identified as the locomotive force in the region, with the possibility to stimulate much-needed regional development.

The CEPS report also refers to the fact that co-operation agreements could be concluded with Southern-Africa in view of the economic importance of this region. In this regard, South Africa could be a valuable partner of the EC in promoting economic growth and stability in the region. CEPS argues that "the EC as the world's most advanced example of successful regional integration is ideally placed to play a creative role in a period of unique opportunity".

I would like to quote from the report:

"The case in favour of priority treatment for Southern Africa is relatively easily stated. South Africa is at a turning point. If the transition to a post-Apartheid system can be accomplished peacefully and results in a stable, multi-racial democracy, this will in itself be a major benefit to the EC. If, in addition, the former front-line States could be assisted to take full advantage of the emergence of a rich and peaceful South Africa as the hub of an integrated regional economy, the EC would once more stand to gain, firstly in terms of its direct relations with the region and secondly as a result of the knock-on effect of economic progress in Southern Africa on sub-Saharan Africa as a whole. Finally, and by no means least, the EC as the world's most advanced example of successful regional integration is ideally placed to play a creative role in a period of unique opportunity."

CEPS argues furthermore that given what has been done in relation to Eastern Europe and the Soviet Union in a relative short span of time, it is necessary for the EC to outline preliminary steps in view of an EC strategy on Southern Africa. Elements from existing

Trade and Co-operation Agreements and even from the new-style Association Agreements with Eastern Europe could be drawn up with Southern Africa. Increased EC trade and co-operation with Southern Africa could only be beneficial. The value-added effect of region-wide agreements, both economically and politically, would be enormous.

4.6. Agreement on South Africa's role in the development of Southern Africa

With reference to South Africa's role in the sub-continent its future co-operation with regional bodies such as the Southern African Development Co-ordination Conference (SADCC) is now an accepted fact. The changing political situation has not only obviated the need for wasteful duplication such as transport links, but has also opened up possibilities in the fields of energy and food production. Examples of this already exist in the co-operation on the Lesotho Highlands Water Scheme and the planning of an integrated Southern African electricity supply grid which has reached an advanced stage.

Since the EC is one of the most important financiers of the SADCC it finds itself in a unique position to facilitate negotiations between the SADCC and South Africa. Furthermore, the EC's own experience in promoting regional interdependence in order to overcome fears of economic dominance by certain member States may prove invaluable.

Judging from recent developments it is obvious that the developed world is becoming disillusioned with the continent's capability to sustain development projects. As further proof of this, Mr. V. Kohler, former German Minister for Economic Co-operation, in a speech in Brussels on November 14th 1991 declared that Germany's total investment in Africa during the past 5 years has dropped to such an extent that today it represents only one tenth of the country's investment in Italy.

The South African Government has on numerous occasions declared itself willing to make available its considerable know-how and experience in the fields of low cost housing, construction, animal husbandry, primary health care and management services. Due to its substantial domestic needs, the country however on its own only possesses a limited capability to extend development assistance to other African countries. Taking into account the above-mentioned views of CEPS I would like to suggest that the possibility to provide for the participation of South African entrepreneurs in development projects funded from the European Development Fund should receive specific attention in the drafting of a co-operation agreement.

4.7. Co-operation in providing for South Africa's domestic development needs

Although the EC's Positive Measures Programme has since its inception in 1986 greatly facilitated development aid for South Africa, I believe the time is now ripe to formalise this channel by its inclusion in a future "Co-operation Agreement" with the Community.

The formalising of the Positive Measures Programme furthermore ties in with a proposal from Mr. L. Tindemans, co-chairman of the EC/ACP Joint Assembly, concerning the establishing of an "International Development Budget" for South Africa. This would entail the creation of a special account outside of the regular South African budget into which all foreign development assistance, such as the Positive Measures Programme, together with the South African Government's own contribution will be deposited.

The EC has already decided to alter the nature and objectives of the Positive Measures Programme. Recognising the need for a development consortium, several SA bodies, such as the Development Bank of Southern Africa and the Independent Development Trust are to provide a framework for managing the EC's development programme. In the past, the Positive Measures Programme was exclusively managed by the Kagiso Trust and three other channels.

5. Conclusion

The road to establishing a new South Africa will be bumpy. This cannot be denied. But more important than this is the fact that millions of South Africans share the same values, ideals and objectives. They all want to be secure in the knowledge that the foundations are being laid for peace, prosperity and progress in which all can share.

Events over the past few months bear witness to the country's profound domestic change. It is time South Africa is given the recognition by the EC it so clearly deserves. May I be so bold as to plead that the EC should strongly support the current reform process by all means possible.

I sincerely hope this action will be heeded. Your own President (Richard von Weizsäcker) has wisely observed the following in an address dealing with the EC's responsibility towards the newly emerging democracies in Eastern Europe (College of Europe: Bruges, Belgium - September 24th, 1990): "People should not experience their freedom as something that initially entails poverty and social distress."

This was also highlighted in the CEPS report as referred to earlier. I would like to conclude with a quote from this report:

"... There are many important rival claimants on EC funding and attention. If, therefore, the European Community is to make a significant impact on the (Southern African) region, the Grand Design, appropriately qualified with conditional clauses concerning the political evolution in South Africa itself, should be announced as soon as possible. The European Council at Maastricht in December 1991 already has a great deal to do. The task would therefore probably be best undertaken by the Commission President in his January speech to the European Parliament and by the European Commission in its work programme for 1992."

Supplement

THE BILL PROPOSED BY THE SOUTH AFRICAN LAW COMMISSION

Article 1: Fundamental rights.

The rights set forth in this Bill are fundamental rights to which every individual and, where applicable, also every juristic person in South Africa is entitled in relation to legislative and governmental bodies, and save as otherwise provided in this Bill those rights shall not be circumscribed, limited, suspended or infringed by any legislation or executive or administrative act of any nature.

Article 2: The right to life.

Everyone has the right to the protection of his or her life.

Article 3: Equality before the law.

- (a) Everyone has the right to equality before the law, which means, inter alia, that save as permitted in this Article, no legislation or executive or administrative act shall directly or indirectly favour or prejudice any person on the grounds of his or her race, colour, sex, religion, ethnic origin, social class, birth, political and other views or disabilities or other natural characteristics.
- (b) To this end the highest legislative body may by legislation of general force and effect introduce such programmes of affirmative action and vote such funds therefor as may reasonably be necessary to ensure that through education and training, financing programmes and employment all citizens have equal opportunities of developing and realising their natural talents and potential to the full.
- (c) The provisions of Sub-Article (a) hereof shall not be construed as making it compulsory for any female person to perform military service.

Article 4: The right to mental and physical integrity.

- (a) Everyone has the right to the protection of his or her mental and physical integrity.

- (b) No one shall be subjected to mental or physical torture, assault or inhuman or degrading treatment.
- (c) No exceptional circumstances whatever, whether a state of war or threat of war, internal political instability or any other public emergency or any order given by a superior officer or by any person holding office in government, shall serve as justification for acts mentioned in paragraph (b).

Article 5: Personal liberty and security.

Everyone has the right to his or her personal liberty and security, which means, inter alia, that no one shall be deprived of his or her liberty save in the following cases and in accordance with a prescribed procedure generally in force by which the fundamental right to his or her mental and physical integrity is not denied:

- (a) Lawful arrest or detention for the purpose of bringing a person before a court of law on the ground of a reasonable suspicion, which shall be justifiable by a court, that he or she has committed or is committing or is attempting to commit a crime;
- (b) lawful detention pursuant upon conviction by a court of law or failure to comply with a lawful order of the court;
- (c) lawful detention in order to prevent the spread of infectious disease;
- (d) lawful detention of a person who is mentally ill or a person addicted to narcotic or addictive substances with a view to his or her admission, in accordance with prescribed procedure, to an institution or rehabilitation centre;
- (e) lawful detention for the prevention of any person's unauthorized presence or sojourn in South Africa or with a view to his or her extradition or deportation in accordance with prescribed procedure.

Article 6: The rights of an arrested person.

Everyone who is arrested has the right -

- (a) to be detained and to be fed under conditions consonant with human dignity and to receive the necessary medical treatment;
- (b) to be informed as soon as possible in a language which he or she understands of the reason for his or her detention and of any charge against him or her;
- (c) to be informed as soon as possible in a language which he or she understands that he or she has the right to remain silent and the right to refrain from making any statement and to be warned of the consequences of making a statement;
- (d) within a reasonable period of time, but not later than 48 hours or the first court day thereafter, to be brought before a court of law and to be charged in writing or informed in writing of the reason for his or her detention, failing which he or she shall be entitled to be released from detention unless on good cause shown a court of law orders further detention;
- (e) to be tried by a court of law within a reasonable time after arrest and pending such trial to be released, which release may be subject to bail or guarantees to appear at the trial, unless on good cause shown a court of law orders further detention;
- (f) to communicate and to consult with a legal practitioner and a medical practitioner of his or her choice;
- (g) to communicate with and to be visited by his or her spouse, family, next of kin, religious counsellor or friends, unless a court of law otherwise orders.

Article 7: The rights of an accused person.

Every accused person has the right -

- (a) not to be sentenced or punished unless he or she has had a fair and public trial before a court of law in accordance with the rules of procedure and

evidence generally in force;

- (b) to be presumed innocent until the contrary is proved by the state or other prosecutor;
- (c) to remain silent and to refuse to testify at the trial;
- (d) not to be convicted or sentenced on the ground of evidence so obtained or presented as to violate any of the rights under this Bill of the accused person or of the witness concerned or of any other person, unless the court, in the light of all the circumstances and in the public interest, otherwise orders;
- (e) to be represented by a legal practitioner;
- (f) to be informed by the presiding officer -
 - (i) of his or her right to be represented by a legal practitioner;
 - (ii) of the institutions which he or she may approach for legal assistance;

and to be given a reasonable opportunity to endeavour to obtain legal assistance: Provided that failure or neglect so to inform an accused person or to give him or her such opportunity shall not result in the setting aside of the proceedings unless on appeal or review a court finds that justice was not done;

- (g) not to be sentenced to an inhuman or degrading punishment;
- (h) not to be convicted of a crime in respect of any act or omission which at the time when it was committed was not a crime and not to be given a sentence more severe than that which was by law applicable at the time when the crime was committed;
- (i) not to be convicted of any crime of which he or she has previously been convicted or acquitted, save in the course of appeal or review proceedings relating to that conviction or acquittal;
- (j) to have recourse, on appeal or review, to a higher court than the court of first instance: Provided that legislation may prescribe that leave to

appeal shall be first obtained.

- (k) to be informed in a language which he or she understands of the reasons for his or her conviction and sentence;
- (l) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her;
- (m) to be sentenced within a reasonable time after conviction.

Article 8: Rights of persons convicted of a crime.

Everyone who has been convicted of a crime and who in accordance with a sentence of a court of law is serving a term of imprisonment has the right -

- (a) to be detained and to be fed under conditions consonant with human dignity and to receive the necessary medical treatment;
- (b) to be given the opportunity to develop and to rehabilitate;
- (c) to be released at the expiry of his or her term of imprisonment as imposed by the court of law.

Article 9: Good name and reputation and dignity.

- (a) Everyone has the right to the protection of his or her good name and reputation.
- (b) Everyone has the right to the recognition and protection of his or her dignity.

Article 10: Privacy.

Everyone has the right to the protection of his or her privacy, which means, inter alia, that his or her property or place of residence or employment shall not be entered, that he or she shall not be searched, that his or her property or possessions shall not be seized and that there shall be no interference with or interception of his or her correspondence or other forms of communication.

Article 11: Forced labour.

Everyone has the right not to be subjected to forced labour; Provided that legislation may provide for -

- (a) such labour as may reasonably be prescribed to be performed during detention pursuant to a sentence of imprisonment imposed by a court of law; and
- (b) reasonable military or civilian national service so that , save during a state of war or the duration of a proclaimed state of emergency, each individual shall have a choice on grounds of religious or conscientious conviction between military and civilian national service of equal duration.

Article 12: Freedom of speech.

Everyone has the right to freedom of speech and other forms of expression and to obtain and disseminate information.

Article 13: Science and art.

Everyone has the right freely to engage in science and art.

Article 14: Legal competence.

Everyone has the right to perform juristic acts and thereby to acquire rights and to incur obligations.

Article 15: Freedom of movement.

Everyone has the right to move freely within South Africa and to reside, to work or to engage in any lawful business, occupation, trade or like activity at any place therein.

Article 16: Passports, citizenship, exile or expulsion and emigration.

Every citizen has the right -

- (a) not to be denied a passport or deprived thereof;

- (b) not to be deprived of his or her South African citizenship;
- (c) not to be exiled or expelled from South Africa; and
- (d) not to be prevented from emigrating.

Article 17: Freedom of association.

Everyone has the right to freedom of association, which means, inter alia, that no legislation or executive or administrative act shall -

- (a) debar or restrain individuals or groups from associating with other individuals or groups;
- (b) compel individuals or groups to associate with other individuals or groups;
- (c) directly or indirectly make available to an individual who or a group which on the ground of race or colour refuses to associate with any other individual or group, any public or state funds to foster the creation or maintenance of such discrimination or exclusion.

Article 18: Religious, linguistic and cultural rights.

Everyone has the right, individually or in community with others, freely to practice the religion and culture and freely to use the language of his or her choice, so that there shall be no prejudice to or favouring of anyone on account of his or her religion, culture or language.

Article 19: Family rights.

Everyone has the right to protection of the integrity of his or her family and freedom to enter into marriage with any person of his or her choice, which includes the choice of entering into a monogamous marriage and having entered into that marriage the maintenance of its monogamous character.

Article 20: Rights of children

- (a) Every child has the right to live with his or her

parents and to be cared for and brought up by them, unless the interests of the child call for some other arrangement.

- (b) Every child has the right to be cared for by the state if there are no relatives with a duty of support towards the child or other persons who are willing or able to care for the child.
- (c) Every indigent child has the right to free state-aided medical care.
- (d) Every child has the right not to be compelled to perform labour or render services harmful to his or her physical or mental health, upbringing or education or amounting to economic exploitation.
- (e) Every child has the right not to be compelled to perform labour or render services for the benefit of the employer of either of his or her parents or any of his or her relatives.
- (f) In all legislative and administrative proceedings the interests of the child shall in all circumstances be paramount.

Article 21: Public education and training

Everyone has the right to freedom of choice with regard to the available public educational and training institutions and fields of study: Provided that -

- (a) free state education shall be provided up to the end of the primary school phase;
- (b) no pupil or student shall on educationally irrelevant grounds be excluded from the available public education opportunities from which he or she may benefit with a view to the acquisition of knowledge, skills and values;
- (c) no state school or state-aided school or institution for education and training shall refuse to admit a pupil or student merely on the ground of his or her race, colour, religion or ethnic origin;
- (d) this Article shall not preclude the establishment and maintenance of private schools or institutions in which no state aid is involved, and such schools or institutions shall have autonomy of

choice as to whom they admit;

(e) this Article shall not preclude the granting of state funds in aid of private schools or private institutions which do not discriminate against pupils or students on the grounds of their race, colour or ethnic descent;

(f) every pupil is entitled, in so far as this is attainable, to be taught all school subjects through the medium of his or her mother tongue or some other language as a language of choice from the first to the last school year.

Article 22: 2. Right to property

(a) Everyone has the right, individually or jointly with others to be or to become the owner of private property or to have a real right in private property or to acquire such right or to be or to become entitled to any other right.

(b) Legislation may authorise the expropriation of any property or other right in the public interest and against payment of just compensation, which in the event of a dispute shall be determined by a court of law.

Article 23: Economic enterprise

Everyone has the right freely and on an equal footing to engage in economic enterprise, which right includes the capacity to establish, manage and maintain commercial undertakings, to acquire property and procure means of production and to offer or accept employment against remuneration.

Article 24: Political rights

Every citizen has the right -

(a) freely to form and to be a member of political parties: Provided that no one shall be compelled to be a member of a political party or to take part in the activities thereof;

(b) to give expression to his or her political convictions in a peaceful manner; and

- (c) to be appointed and elected to legislative, executive and administrative office.

Article 25: Assemblies, demonstrations and petitions.

Everyone has the right to assemble and to demonstrate peacefully and unarmed and to canvass for and present petitions.

Article 26: Franchise.

Every citizen over the age of eighteen years has the right to exercise the vote on a basis of equality in accordance with the Constitution in respect of legislative and other institutions and other public offices at regular and periodical elections and at referendums.

Article 27: Social security.

Everyone has the right -

- (a) to form employees' or employers' organisations and, if he or she qualifies therefor, to become a member of any such organisation of his or her choice or not to become a member thereof;
- (b) to obtain employment in accordance with the principles of supply and demand and accordingly to make use of the available opportunities of employment;
- (c) lawfully to make provision for any costs that may arise from his or her mental or physical illness and that of his or her dependants, as well as for the costs of pregnancy, loss as a result of unemployment, disability, accident or age;
- (d) lawfully to make provision for the maintenance of a reasonable standard of living for himself or herself and his or her dependants;
- (e) lawfully to provide for his or her proper education and training and that of his or her dependants with a view to the development of each to his or her full potential;
- (f) to claim the available state assistance to provide for his or her own necessary subsistence and

medical needs where he or she is unable to provide for such needs by reason of physical or mental illness or disability and where there is no person who may by virtue of a duty of support be compelled to provide for such needs.

Article 28: Employees rights.

Every employee has the right -

- (a) to work under safe, acceptable and hygienic conditions;
- (b) to work reasonable hours;
- (c) to be given sufficient opportunity for rest, recreation and leave;
- (d) to receive equal payment with other employees for corresponding production of an acceptable quality, due regard being had to such aspects as qualifications, experience, the means of the employer and the forces of supply and demand in the labour field;
- (e) to the protection of his or her physical and mental well-being;
- (f) to make provision against the risk of unemployment and accidents during the course of employment;
- (g) to take part in collective bargaining;
- (h) to take part in strikes and to withhold labour;
- (i) not to be subject to unfair labour practices.

Article 29: Employer's rights.

Every employer has the right -

- (a) to offer employment and to engage employees in accordance with his or her needs, due regard being had to the fitness, qualifications and level of training and competence of the employee;
- (b) to require of an employee adequate production of an acceptable quality and to lock out labour;
- (c) to terminate the service of an employee in

accordance with the common law or in accordance with his or her contract of employment with the employee, or in accordance with any relevant enactment, whichever of these or whichever combination thereof applies;

(d) of his or her free will to associate or to form a group with others, or not to do so;

(e) in accordance with the law to apply the principle of "no work, no pay";

(f) to run his or her business, particularly with a view to its economic viability and continued existence;

(g) where necessary, and in his or her own discretion, to make use of alternative labour to maintain productions or service;

(h) to negotiate and to bargain collectively or individually;

(i) to be protected from unfair labour practices such as intimidation and victimisation.

Article 30: Environmental rights.

Everyone has the right not to be exposed to an environment which is dangerous to human health or well-being or which is seriously detrimental thereto and has the right to the conservation and protection of that environment.

Article 31: Review of administrative acts and subordinate legislation.

Everyone has the right to have civil disputes settled by a court of law and to have recourse to the Supreme Court to review, by virtue of its inherent jurisdiction, any subordinate legislation and any executive act and any administrative act.

Article 32: Rules of natural justice.

Everyone has the right to have the rules of natural justice applied in administrative proceedings and actions in which, on the grounds of findings of fact

and of law, the rights or legitimate expectations of an individual or a group are infringed or likely to be infringed, and in such cases every person having an interest in the matter has the right to be furnished on demand with the reasons for a decision.

Article 33: Application of South African law.

Everyone has the right to have South African law, including the rules of South African Private International Law, applied in all proceedings before a court of law: Provided that legislation may provide for the application of the choice of legal rules relating to and judicial notice of the law of indigenous groups or the religious law of religious groups: Provided further that in civil proceedings such indigenous or religious law shall be applied only if all the parties agree thereto.

Article 34: Circumscription and suspension.

(1) Circumscription

With the exception of the rights, procedures and institutions referred to in Articles 1; 3; 4(b) and (c); 5; 6(a); to (e) inclusive; 7; 8; 9(b); 11; 16(c) and (d); 17; 18; 19; 20; 21; 22(b); 24(a) and (b); 31; 32; 34; 35; 36; 37; 39; 40 and 41, the rights, procedures and institutions set forth in this Bill may be circumscribed by legislation of general force and effect: Provided that such circumscription -

- (a) shall be permissible only in so far as it is reasonably necessary for considerations of state security, the public order and interest, good morals, public health, the administration of justice, public administration, or the rights of others or for the prevention or combating of disorder and crime; and
- (b) shall not derogate from the general substance of the right in question.

(2) Suspension

- (a) The rights set forth in this Bill may be suspended only in accordance with enabling legislation relating to a state of emergency,

such legislation to be passed by the highest legislative body and to be of temporary operation.

(b) Where such suspension is so effected the following requirements shall be complied with:

- (i) A state of emergency shall be proclaimed only where the security or continued existence of the state is threatened by war, invasion or general insurrection and the proclaiming of a state of emergency is reasonably necessary to bring about peace or order.
- (ii) A state of emergency shall not be proclaimed for a period exceeding six months from a given time.
- (iii) The said legislation relating to the proclamation of a state of emergency shall provide that within three weeks after the proclamation of the state of emergency, not less than two-thirds of the directly elected members of the highest legislative body shall ratify the proclamation of the state of emergency and the rules and regulations that will apply during the state of emergency.
- (iv) Legislation relating to the state of emergency or regulations made thereunder shall not permit, authorise or sanction the cruel or inhuman treatment of persons, the retroactive creation of crimes, detention without trial, indemnity of the state or any officer of the state for acts done during the state of emergency or the subjective discretionary use of force by any officer of the state or government: Provided that -

(aa) the foregoing notwithstanding, Articles 1; 2; 3; 4; 5; 6(a), (b), (c), (e), (f) and (g); 7; 8; 9; 11; 14; 16(b) and (c); 17(b) and (c); 18; 19; 20; 21; 22; 24; 26; 31; 32; 33; 34; 35; 36; 37; 39(b); 40 and

41 shall remain of force and effect and shall not be suspended;

- (bb) any person detained under emergency measures shall within seven days or on the first succeeding court day thereafter be brought before a court of law and be charged in writing or informed in writing of the reason for his or her detention, failing which he or she shall be entitled to be released from detention unless on good cause shown a court of law orders further detention.

Article 35: Testing right of the courts

- (a) Any law, enactment or regulation of whatever nature of any legislative body in South Africa or any executive or administrative act which violates any of the rights set forth in this Bill or which exceeds any of the circumscriptions or suspensions herein permitted shall to the extent of such violation or excess be invalid.
- (b) Any court in which an alleged violation or excess as referred to in paragraph (a) hereof is raised shall be competent to pronounce judgment thereon.
- (c) The Constitutional Chamber of the Appellate Division shall hear all appeals before the Appellate Division in which, in the opinion of the Chief Justice, the only or main issue or issues arise from the provisions of the bill of rights, the other provisions of the Constitution Act, the Constitution in general and executive or administrative acts. The Chief Justice shall therefore place all appeals to the Appellate Division on the roll of either the General Chamber or the Constitutional Chamber.
- (d) Any individual, juristic person or association has the capacity on behalf of himself or herself or itself or any other individual or any group or class of persons to test, by virtue of the provisions of this Bill, the validity of any legislative,

executive or administrative act by applying to the appropriate Division of the Supreme Court for a declaratory order notwithstanding the fact that the applicant is able to prove only an indirect interest or indirect prejudice.

Article 36: Human Rights Commission.

- (a) There shall be a permanent, full-time Human Rights Commission under the chairmanship of a Judge of Appeal or retired Judge of Appeal which shall -
 - (i) assume responsibility for and co-ordinate education and information in respect of democratic values and human rights in South Africa and initiate educational programmes and information projects;

Article 37: Ombudsman

- (a) There shall be a permanent full-time Ombudsman who shall on his or her own initiative or in response to representations made -
 - (i) investigate complaints of maladministration by executive or administrative bodies or persons, including the violation of human rights as contained in this Bill;
 - (ii) investigate complaints against state institutions or administrative bodies or officers or employees thereof regarding unfair, unjust and discourteous conduct which infringes or has infringed human rights as contained in this Bill;
 - (iii) act on behalf of groups of individuals, including patients in hospitals, taxpayers, pensioners, prisoners, children and other groups who's individual rights have been prejudiced or are likely to be prejudiced by a specific act or acts by the executive authority or the administration;
 - (iv) generally watch over the upholding and respecting of human rights by the executive and administrative bodies and officers, and

himself or herself take the initiative in protecting the human rights set forth in this Bill;

- (v) institute enquiry as to whether or not acts done by the executive or administrative authorities under powers conferred by subordinate or delegated legislation and which appear to infringe the human rights set forth in this Bill are unconstitutional;
 - (vi) through investigation, mediation, conciliation and negotiation endeavour to reach a settlement between the complainant and the body or person complained of, which may include obtaining an apology, revoking a decision or ruling, reconsidering the complainant's application or request, or effecting a change in policy or practice;
 - (vii) co-operate with the Human Rights Commission with a view to attaining the aims and objects of the Commission;
 - (viii) in respect of every investigation carried out by him or her report in writing, at least once each year, to the highest legislative body concerning his or her findings relating to the infringement of human rights and the steps and actions taken or recommended by him or her, such report to be published for general information simultaneously with submission thereof to that legislative body.
- (b) Further provision shall be made in the Constitution for the functions of the Ombudsman.

Article 38: Positive promotion of all human rights.

Apart from the duty of all legislative and executive and administrative institutions of the state not to infringe the fundamental rights set forth in this Bill, all the said institutions shall use those fundamental rights as guidelines in instituting and carrying out legislative programmes and executive and administrative planning and action for the promotion of those rights.

Article 39: Operation in respect of third parties.

- (a) The rights set forth in this Bill shall be

exercised by every individual in such a manner as will not infringe the rights granted under this Bill to any other individual.

- (b) In the interpretation of all legislation, including legislation regulating only the relations between persons, the court shall have regard to the provisions of this Bill and shall as far as may be appropriate construe the said legislation in a manner consonant with the values enshrined in this Bill.

Article 40: Application of Bill.

The provisions of this Bill shall apply to all existing and future legislation and to all executive and administrative acts done after the date of the coming into operation of this Bill.

Article 41: Amendment or repeal.

This Bill, including this Article, shall not be amended or repealed save by a two-thirds majority of the votes of all the directly elected members entitled to vote in the highest legislative body, ratified by the same majority of votes cast in a referendum in which everyone entitled to vote in an election for the said body may cast his or her vote.